The Ohio court has granted cancellation, basing their decision on the ground of fraud. *Reid* v. *Burns*, 13 Oh. St. 49. Courts of equity have granted cancellation where a mortgage was given to insure support. *Kusch* v. *Kusch*, (1902), — Wis. —, 89 N. W. Rep. 118, or where the conveyance reserves a life estate to the grantor, together with an agreement to support the grantee. *Patterson* v. *Patterson*, 81 Ia. 626, 47 N. W. Rep. 768; *Lockwood* v. *Lockwood*, 124 Mich. 627, 83 N. W. Rep. 613. An early Illinois case is directly in point with the principal case. It sustains the conclusion reached by the Wisconsin court. *Frazier* v. *Miller*, 16 Ill. 48.

It would seem that, if the remedy on the bond would not place the parent in as good a position as he was before the conveyance was made, then cancellation should be granted.

FRAUD—SALES—FALSE REPRESENTATIONS TO MERCANTILE AGENCY.—An action was brought to recover the price of goods sold, notwithstanding a discharge in bankruptcy, alleging that the goods were obtained by fraudulent representations. The defendant was alleged to have made a false statement of his assets to a commercial agency, which gave him a rating based on this statement and information from other sources. The vendor, in giving credit, relied wholly on the rating as published, knowing nothing of the vendee's statement. *Held*, (Vann, J. dissenting), that this was such fraud as would ustify a recovery. *Tindle* v. *Birkett* (1902), — N. Y. —, 64 N. E. Rep. 210.

The Appellate Division affirmed the judgment dismissing the complaint, holding that unless the vendee's statement was communicated to the vendor, and relied upon by him, no action was maintainable. 57 App. Div. 540. The Court of Appeals reversed this decision, saying that "if the buyer does just what this defendant did, and procures a fraudulent rating, intending that it should be published to the business community and taken as true, it is a fraud on the person who relies and acts upon it." In a bankruptcy proceeding by the same parties, in the U. S. District Court, it was held that the action of the vendee did not amount to a fraud on the vendor. 5 Am. Bankruptcy Cases 608.

Apparently the only other case involving similar facts is *Aultman* v. *Carr* (1897), — Tex. —, 42 S. W. Rep. 614, in which it was held that the vendor need have no knowledge of the false statements, but it is sufficient that he relies on a rating based upon them. In the other cases of this sort the vendee's statements seem always to have been communicated to the vendor, and the opinions indicate that the seller must have actual knowledge of them, and that a mere deduction by the agency is not binding on the buyer. *Holmes* v. *Harrington*, 50 Mo. App. 661; *Stevens* v. *Ludlum*, — Minn. —, 48 N. W. Rep. 771; *Kilpatrick* v. *McPheely*, 37 Neb. 800. Where the agency's report is made up partly of its own conclusions and partly of the buyer's statements, and the seller relies on the report *as a whole*, he can not rescind. *Poska* v. *Stearns*, 56 Neb. 541, 76 N. W. Rep. 1078. Knowingly to permit continued publication of statements made to a commercial agency when no longer true, is fraud. MECHEM ON SALES, § 896, and cases cited.

INSURANCE—TOTAL LOSS.—A cold storage building was insured in appellant company under two policies providing, that except in case of total loss, on the failure of parties to agree, the loss should be estimated by three disinterested parties. The building burned, but portions of the walls were left standing, though the testimony was conflicting as to their value. The trial court charged that there was a total loss, even if portions of the walls left were suitable for rebuilding, provided the building had lost its identity and specific

character. *Held*, that the instruction was erroneous. *Northwestern Mutual Insurance Co.* v. *Rochester German Insurance Co.*, (1901), — Minn. —, 88 N. W. Rep. 265, 56 L. R. A. 108.

The court held, that the cases wherein total loss had been defined as a "loss of identity and specific character" were almost entirely those in which there had been a substantial destruction of the building. Each case must in general rest on its own facts, but there will be deemed to be a total loss unless there remains a substantial part of the building in place, which with reasonable repairs may be used for rebuilding. It was proper in this case to submit it to the jury. The court relied among others on these cases: *Royal Ins. Co.* v. *McIntyre*, 90 Tex. 170, 35 L. R. A. 672; *Providence Washington Ins. Co.* v. *Board of Education*, 49 W. Va. 360, 38 S. E. Rep. 679; *Corbett* v. *Spring Garden Ins. Co.*, 155 N. Y. 389, 41 L. R. A. 318; *Seyle* v. *Millers' Nat. Ins. Co.*, 74 Wis. 67, 41 N. W. Rep. 443; *Lindner* v. *Ins. Co.*, 93 Wis. 526, 67 N. W. Rep. 1125; *Ohage* v. *Union Ins. Co.*, 82 Minn. 426, 85 N. W. 212.

MANDAMUS—JURISDICTION TO ISSUE WRIT AGAINST THE GOVERNOR.—A statute of Ohio, in terms held by the court to be mandatory and to leave no room for discretion, required the governor to make appointments to fill vacancies in office. Such a vacancy occurred, which the governor declined to fill by appointment. *Held*, that the court had jurisdiction to issue the writ of mandamus to the governor to require him to make the appointment. *State* v. *Nash* (1902), — Ohio St. —, 64 N. E. Rep. 558.

A similar holding in Nebraska was noted in the preceding number. 1 MICH. LAW REV., 144. As was there observed, the cases upon the question are in conflict, but many courts have exercised the jurisdiction where the act in question was a ministerial duty positively imposed. Such has been the holding in Ohio since 1856. *State* v. *Governor*, 5 Ohio St. 528. In the principal case, the court referred particularly to the dissenting opinions in *State* v. *Canvassers*, 17 Fla. 9; *People* v. *Morton*, 156 N. Y. 136, 50 N. E. 791.

MASTER AND SERVANT—CONTRACT—SATISFACTION OF PROMISEE.—The defendant hired the plaintiff, under a written contract, as a color-mixer, the work to be done to the satisfaction of the defendant. The plaintiff brought an action for an unlawful discharge. The defendant relied, in justification of the discharge, on dissatisfaction with the work done. *Held*, that it was proper to submit to the jury, the questions: (1) Was the employer dissatisfied with the work, and (2) was the discharge the result of the dissatisfaction? *Gwynne* v. *Hitchner* (1902),—N. J. L.—, 52 Atl. Rep. 997.

This appears to modify the general rule "that where the subject matter of the contract involves personal taste and judgment the reasonableness of the satisfaction is immaterial." In reality it follows the general rule but modifies the application of it to the facts and is a just and reasonable modification. It is followed in *Hartford Sorghum Manf. Co.* v. *Brush*, 43 Vt. 528, and *Daggett* v. *Johnson*, 49 Vt. 345.

MORTGAGES—FORECLOSURE—REDEMPTION.—A suit in equity to foreclose certain mortgages on a lease of a portion of a harbor area, a wharf, a fishing and fish-canning plant, and all personal property used for carrying on the business. The lower court decreed that all of said property should be sold in one parcel, absolutely, and without redemption. The state laws provided that sales of real estate should be subject to redemption. *Held*: That the property should be sold as an entirety, and not subject to the right of redemption.